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Right of peoples to self-determination

Report of the Third Committee

Rapporteur: Ms. Oksana **Boiko** (Ukraine)

I. Introduction

1. At its 19th plenary meeting, on 20 September 2002, the General Assembly, on the recommendation of the General Committee, decided to include in the agenda of its fifty-seventh session the item entitled "Right of peoples to self-determination" and to allocate it to the Third Committee.

2. The Third Committee considered the item at its 24th to 29th, 31st, 36th and 40th meetings, on 23, 24, 28, 29 and 31 October and 5 and 7 November 2002. At its 24th to 29th meetings, the Committee held a general discussion on item 108 jointly with item 107. An account of the Committee's discussion is contained in the relevant summary records (A/C.3/57/SR.24-29, 31, 36, and 40).

3. For its consideration of the item, the Committee had before it the following documents:

(a) Note by the Secretary-General transmitting the report of the Special Rapporteur on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (A/57/178);

(b) Report of the Secretary-General on the right of peoples to self-determination (A/57/312);

(c) Letter dated 27 September 2002 from the Chargé d'affaires a.i. of the Permanent Mission of the Sudan to the United Nations addressed to the Secretary-General (A/57/458-S/2002/1125).

4. At the 24th meeting, on 23 October, the Director of the New York Office of the United Nations High Commissioner for Human Rights made an introductory statement (see A/C.3/57/SR.24).

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5. At the same meeting, the representative of the New York Office of the United Nations High Commissioner for Human Rights presented the report on the question of the use of mercenaries, on behalf of the Special Rapporteur of the Commission on Human Rights (see A/C.3/57/SR.24).

6. Also at the 24th meeting, the Committee engaged the above-mentioned speakers in a dialogue, in which the representatives of Denmark and Cuba took part.

II. Consideration of proposals

A. Draft resolution A/C.3/57/L.31

7. At the 31st meeting, on 31 October, the representative of Cuba, on behalf of Algeria, Angola, Benin, Burundi, Cambodia, Cameroon, China, the Comoros, the Congo, Costa Rica, Cuba, the Democratic People's Republic of Korea, the Democratic Republic of the Congo, the Dominican Republic, Ecuador, Egypt, El Salvador, Eritrea, Ethiopia, India, the Islamic Republic of Iran, Iraq, Kenya, the Lao People's Democratic Republic, Liberia, the Libyan Arab Jamahiriya, Madagascar, Mali, Myanmar, Nigeria, Pakistan, Peru, the Russian Federation, the Sudan, Suriname, Swaziland, the Syrian Arab Republic, Togo, the United Republic of Tanzania, Viet Nam and Yemen, introduced a draft resolution entitled "Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination" (A/C.3/57/L.31).

8. At the 40th meeting, on 7 November, the Secretary of the Committee read out a statement from the Director of the Programme Planning and Budget Division with regard to the draft resolution (see A/C.3/57/SR.40).

9. At the same meeting, the representative of Cuba orally revised operative paragraph 5 of the draft resolution by inserting a comma and the words "accede to" after the words "to sign".

10. Namibia joined in sponsoring the draft resolution, as orally revised.

11. Also at the 40th meeting, the Committee adopted draft resolution A/C.3/57/L.31, as orally revised, by a recorded vote of 108 to 19, with 32 abstentions (see para. 19, draft resolution I). The voting was as follows:[1]

In favour:

Afghanistan, Algeria, Angola, Antigua and Barbuda, Argentina, Armenia, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belize, Benin, Bhutan, Bolivia, Brazil, Brunei Darussalam, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Chile, China, Colombia, Congo, Costa Rica, Cuba, Democratic People's Republic of Korea, Democratic Republic of the Congo, Djibouti, Dominica, Dominican Republic, Egypt, El Salvador, Eritrea, Ethiopia, Fiji, Gambia, Ghana, Grenada, Guatemala, Guyana, India, Indonesia, Iran (Islamic Republic of), Jamaica, Jordan, Kenya, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Lebanon, Lesotho, Libyan Arab Jamahiriya, Madagascar, Malawi, Malaysia, Maldives, Mali, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Myanmar, Namibia,

[1] The delegation of Ecuador stated that it had intended to vote in favour of the draft resolution, but its vote had not registered.

Nepal, Nicaragua, Nigeria, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Qatar, Russian Federation, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Saudi Arabia, Senegal, Singapore, Somalia, South Africa, Sri Lanka, Sudan, Suriname, Swaziland, Syrian Arab Republic, Thailand, Togo, Trinidad and Tobago, Tunisia, Uganda, United Arab Emirates, United Republic of Tanzania, Uruguay, Vanuatu, Venezuela, Viet Nam, Yemen, Zambia, Zimbabwe.

Against:

Belgium, Canada, Czech Republic, Denmark, Estonia, Finland, Georgia, Iceland, Israel, Italy, Japan, Luxembourg, Micronesia (Federated States of), Netherlands, Norway, Poland, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America.

Abstaining:

Albania, Andorra, Australia, Austria, Bulgaria, Croatia, Cyprus, France, Germany, Greece, Hungary, Ireland, Kazakhstan, Latvia, Liechtenstein, Lithuania, Malta, Monaco, Nauru, New Zealand, Portugal, Republic of Korea, Republic of Moldova, Romania, San Marino, Slovakia, Slovenia, Spain, Switzerland, Turkey, Ukraine, Yugoslavia.

12. Before the draft resolution was adopted, the representative of Canada made a statement, also on behalf of New Zealand; after it was adopted, statements were made by the representatives of Armenia, Denmark (also on behalf of the European Union and Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia, as well as Cyprus, Malta, Turkey and Iceland) and the United States of America (see A/C.3/57/SR.40).

B. Draft resolution A/C.3/57/L.33

13. At the 31st meeting, on 31 October, the representative of Pakistan, on behalf of Algeria, Armenia, Azerbaijan, Bahrain, Bangladesh, Benin, Bosnia and Herzegovina, Brunei Darussalam, Burkina Faso, Cameroon, the Comoros, the Democratic Republic of the Congo, Djibouti, the Dominican Republic, Egypt, El Salvador, Eritrea, Ethiopia, Iran (Islamic Republic of), Iraq, Jordan, Kenya, Kuwait, Lebanon, the Libyan Arab Jamahiriya, Madagascar, Malaysia, Mali, the Niger, the Nigeria, Oman, Pakistan, Qatar, Saint Lucia, Saudi Arabia, Singapore, Suriname, Togo, the United Arab Emirates and Viet Nam, introduced a draft resolution entitled "Universal realization of the right of peoples to self-determination" (A/C.3/57/L.33). Subsequently, Botswana, Liberia, Mauritania, Somalia, Thailand, Zambia and Zimbabwe joined in sponsoring the draft resolution.

14. At its 40th meeting, on 7 November, the Committee adopted draft resolution A/C.3/57/L.33 without a vote (see para. 19, draft resolution II).

15. Before the draft resolution was adopted, statements were made by the representatives of Benin, India, Singapore and Viet Nam; after it was adopted, statements were made by the representatives of Argentina, Pakistan and Armenia (see A/C.3/57/SR.40).

C. Draft resolution A/C.3/57/L.35

16. At the 36th meeting, on 5 November, the representative of Egypt, on behalf of Afghanistan, Algeria, Andorra, Antigua and Barbuda, Argentina, Armenia, Austria, Bahrain, Bangladesh, Belgium, Belize, Benin, Bolivia, Brazil, Brunei Darussalam, Burkina Faso, Cape Verde, Chile, China, the Congo, Costa Rica, Croatia, Cuba, Cyprus, the Czech Republic, the Democratic People's Republic of Korea, the Democratic Republic of the Congo, Denmark, Djibouti, Ecuador, Egypt, Eritrea, Ethiopia, Finland, France, Germany, Greece, Hungary, Iceland, Indonesia, Ireland, Italy, Japan, Jordan, Kenya, Kuwait, the Lao People's Democratic Republic, Lebanon, Liberia, Liechtenstein, Luxembourg, Malaysia, Mali, Malta, Mauritania, Monaco, Morocco, Namibia, the Netherlands, the Niger, Nigeria, Norway, Oman, Pakistan, Panama, Poland, Portugal, Qatar, Saint Lucia, San Marino, Saudi Arabia, Senegal, Sierra Leone, Somalia, South Africa, Spain, the Sudan, Suriname, Sweden, Tunisia, Turkey, Ukraine, the United Arab Emirates, the United Kingdom of Great Britain and Northern Ireland, the United Republic of Tanzania, Viet Nam, Yemen, Zambia, Zimbabwe and Palestine,[2] introduced a draft resolution entitled "The right of the Palestinian people to self-determination" (A/C.3/57/L.35). Subsequently, Albania, Bhutan, Bosnia and Herzegovina, Bulgaria, Guyana, India, Madagascar, Mali, Mozambique, Swaziland, Switzerland, the former Yugoslav Republic of Macedonia and Yugoslavia joined in sponsoring the draft resolution.

17. At the 40th meeting, on 7 November, at the request of the representative of Israel, the Committee voted on draft resolution A/C.3/57/L.35. The draft resolution was adopted by a recorded vote of 156 to 3, with 3 abstentions (see para. 19, draft resolution III). The voting was as follows:

In favour:

Afghanistan, Albania, Algeria, Andorra, Angola, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bhutan, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Burundi, Cambodia, Canada, Cape Verde, Chile, China, Colombia, Congo, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Democratic People's Republic of Korea, Democratic Republic of the Congo, Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Eritrea, Estonia, Ethiopia, Finland, France, Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guyana, Haiti, Hungary, Iceland, India, Indonesia, Iran (Islamic Republic of), Ireland, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Lesotho, Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Monaco, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nepal, Netherlands, New Zealand, Nigeria, Norway, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, Singapore, Slovakia, Slovenia, Somalia, South Africa, Spain, Sri Lanka, Sudan, Suriname,

[2] In accordance with General Assembly resolution 52/250.

Swaziland, Sweden, Switzerland, Syrian Arab Republic, Thailand, the former Yugoslav Republic of Macedonia, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, Uruguay, Venezuela, Viet Nam, Yemen, Yugoslavia, Zambia, Zimbabwe.

Against:

Israel, Marshall Islands, United States of America.

Abstaining:

Cameroon, Micronesia (Federated States of), Nicaragua.

18. Before the draft resolution was adopted, statements were made by the representatives of Egypt, Denmark (on behalf of the European Union and Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia, as well as Cyprus, Malta, Turkey, Iceland and Norway) and Israel; after it was adopted, statements were made by the representatives of Canada, Australia and Egypt.

III. Recommendations of the Third Committee

19. The Third Committee recommends to the General Assembly the adoption of the following draft resolutions:

Draft resolution I
Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

The General Assembly,

Recalling its resolution 56/232 of 24 December 2001, and taking note of Commission on Human Rights resolution 2002/5 of 12 April 2002,[3]

Recalling also all of its relevant resolutions, in which, inter alia, it condemned any State that permitted or tolerated the recruitment, financing, training, assembly, transit and use of mercenaries with the objective of overthrowing the Governments of States Members of the United Nations, especially those of developing countries, or of fighting against national liberation movements, and recalling further the relevant resolutions and international instruments adopted by the Security Council, the Economic and Social Council and the Organization of African Unity, inter alia, the Convention of the Organization of African Unity on the Elimination of Mercenarism in Africa,

Reaffirming the purposes and principles enshrined in the Charter of the United Nations concerning the strict observance of the principles of sovereign equality, political independence, the territorial integrity of States, the self-determination of peoples, the non-use of force or of the threat of use of force

[3] See *Official Records of the Economic and Social Council, 2002, Supplement No. 3* (E/2002/23), chap. II, sect. A.

in international relations and non-interference in affairs within the domestic jurisdiction of States,

Reaffirming also that, by virtue of the principle of self-determination, all peoples have the right freely to determine their political status and to pursue their economic, social and cultural development, and that every State has the duty to respect this right in accordance with the provisions of the Charter,

Reaffirming further the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,[4]

Alarmed and concerned at the danger that the activities of mercenaries constitute to peace and security in developing countries, in particular in Africa and in small States,

Deeply concerned at the loss of life, the substantial damage to property and the negative effects on the policy and economies of affected countries resulting from criminal mercenary activities,

Convinced that, notwithstanding the way in which they are used or the form they take to acquire some semblance of legitimacy, mercenaries or mercenary-related activities are a threat to peace, security and the self-determination of peoples and an obstacle to the enjoyment of human rights by peoples,

1. *Welcomes* the report of the Special Rapporteur of the Commission on Human Rights on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination;[5]

2. *Reaffirms* that the use of mercenaries and their recruitment, financing and training are causes for grave concern to all States and violate the purposes and principles enshrined in the Charter of the United Nations;

3. *Recognizes* that armed conflict, terrorism, arms trafficking and covert operations by third Powers, inter alia, encourage the demand for mercenaries on the global market;

4. *Urges* all States to take the necessary steps and to exercise the utmost vigilance against the menace posed by the activities of mercenaries and to take legislative measures to ensure that their territories and other territories under their control, as well as their nationals, are not used for the recruitment, assembly, financing, training and transit of mercenaries for the planning of activities designed to impede the right of peoples to self-determination, to destabilize or overthrow the Government of any State or to dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the right of peoples to self-determination;

5. *Stresses* the entry into force of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries,[6] and calls upon

[4] Resolution 2625 (XXV), annex.

[5] See A/57/178.

[6] Resolution 44/34, annex.

all States that have not yet done so to consider taking the necessary action to sign, accede to or ratify it, as a matter of priority;

6. *Welcomes* the cooperation extended by those countries that have received visits from the Special Rapporteur;

7. *Welcomes also* the adoption by some States of national legislation that restricts the recruitment, assembly, financing, training and transit of mercenaries;

8. *Calls upon* States to investigate the possibility of mercenary involvement whenever and wherever criminal acts of a terrorist nature occur and to bring to trial those found responsible or to consider their extradition, if so requested, in accordance with domestic law and applicable bilateral or international treaties;

9. *Welcomes* the convening by the Office of the United Nations High Commissioner for Human Rights of the second meeting of experts on the question of traditional and new forms of mercenary activities as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, and recognizes its contribution to the process of formulating a clearer legal definition of mercenaries that would make more efficient the prevention and punishment of mercenary activities;

10. *Requests* the Special Rapporteur to continue working to propose a clearer definition of mercenaries, including clear nationality criteria, based on his findings, the proposals of States and the outcomes of the meetings of experts, and to make suggestions on the procedure to be followed for international adoption of a new definition;

11. *Requests* the Office of the High Commissioner, as a matter of priority, to publicize the adverse effects of the activities of mercenaries on the right of peoples to self-determination and, when requested and where necessary, to render advisory services to States that are affected by the activities of mercenaries;

12. *Requests* the Special Rapporteur to continue taking into account in the discharge of his mandate the fact that mercenary activities continue to occur in many parts of the world and are taking on new forms, manifestations and modalities;

13. *Urges* all States to cooperate fully with the Special Rapporteur in the fulfilment of his mandate;

14. *Requests* the Secretary-General and the High Commissioner to provide the Special Rapporteur with all the necessary assistance and support for the fulfilment of his mandate, both professional and financial, including through the promotion of cooperation between the Special Rapporteur and other components of the United Nations system that deal with countering mercenary-related activities;

15. *Requests* the Special Rapporteur to consult States and intergovernmental and non-governmental organizations in the implementation of the present resolution and to report, with specific recommendations, to the

General Assembly at its fifty-eighth session his findings on the use of mercenaries to undermine the right of peoples to self-determination;

16. *Decides* to consider at its fifty-eighth session the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination under the item entitled "Right of peoples to self-determination".

Draft resolution II
Universal realization of the right of peoples to self-determination

The General Assembly,

Reaffirming the importance, for the effective guarantee and observance of human rights, of the universal realization of the right of peoples to self-determination enshrined in the Charter of the United Nations and embodied in the International Covenants on Human Rights,[7] as well as in the Declaration on the Granting of Independence to Colonial Countries and Peoples contained in General Assembly resolution 1514 (XV) of 14 December 1960,

Welcoming the progressive exercise of the right to self-determination by peoples under colonial, foreign or alien occupation and their emergence into sovereign statehood and independence,

Deeply concerned at the continuation of acts or threats of foreign military intervention and occupation that are threatening to suppress, or have already suppressed, the right to self-determination of peoples and nations,

Expressing grave concern that, as a consequence of the persistence of such actions, millions of people have been and are being uprooted from their homes as refugees and displaced persons, and emphasizing the urgent need for concerted international action to alleviate their condition,

Recalling the relevant resolutions regarding the violation of the right of peoples to self-determination and other human rights as a result of foreign military intervention, aggression and occupation, adopted by the Commission on Human Rights at its fifty-eighth and previous sessions,

Reaffirming its previous resolutions on the universal realization of the right of peoples to self-determination, including resolution 56/141 of 19 December 2001,

Also reaffirming its resolution 55/2 of 8 September 2000, containing the United Nations Millennium Declaration, which, inter alia, upholds the right to self-determination of peoples under colonial domination and foreign occupation,

Taking note of the report of the Secretary-General on the right of peoples to self-determination,[8]

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[7] Resolution 2200 A (XXI), annex.

[8] A/57/312.

1. *Reaffirms* that the universal realization of the right of all peoples, including those under colonial, foreign and alien domination, to self-determination is a fundamental condition for the effective guarantee and observance of human rights and for the preservation and promotion of such rights;

2. *Declares* its firm opposition to acts of foreign military intervention, aggression and occupation, since these have resulted in the suppression of the right of peoples to self-determination and other human rights in certain parts of the world;

3. *Calls upon* those States responsible to cease immediately their military intervention in and occupation of foreign countries and territories and all acts of repression, discrimination, exploitation and maltreatment, in particular the brutal and inhuman methods reportedly employed for the execution of those acts against the peoples concerned;

4. *Deplores* the plight of millions of refugees and displaced persons who have been uprooted as a result of the aforementioned acts, and reaffirms their right to return to their homes voluntarily in safety and honour;

5. *Requests* the Commission on Human Rights to continue to give special attention to the violation of human rights, especially the right to self-determination, resulting from foreign military intervention, aggression or occupation;

6. *Requests* the Secretary-General to report on this question to the General Assembly at its fifty-eighth session under the item entitled "Right of peoples to self-determination".

Draft resolution III
The right of the Palestinian people to self-determination

The General Assembly,

Aware that the development of friendly relations among nations, based on respect for the principle of equal rights and self-determination of peoples, is among the purposes and principles of the United Nations, as defined in the Charter,

Recalling the International Covenants on Human Rights,[9] the Universal Declaration of Human Rights,[10] the Declaration on the Granting of Independence to Colonial Countries and Peoples[11] and the Vienna Declaration and Programme of Action adopted at the World Conference on Human Rights on 25 June 1993,[12]

Recalling also the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations,[13]

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[9] Resolution 2200 A (XXI), annex.
[10] Resolution 217 A (III).
[11] Resolution 1514 (XV).
[12] A/CONF.157/24 (Part I), chap. III.
[13] See resolution 50/6.

Recalling further the United Nations Millennium Declaration,[14]

Expressing the urgent need for the resumption of negotiations within the Middle East peace process on its agreed basis and for the speedy achievement of a final settlement between the Palestinian and Israeli sides,

Affirming the right of all States in the region to live in peace within secure and internationally recognized borders,

1. *Reaffirms* the right of the Palestinian people to self-determination, including the right to their independent State of Palestine;

2. *Urges* all States and the specialized agencies and organizations of the United Nations system to continue to support and assist the Palestinian people in the early realization of their right to self-determination.

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[14] See resolution 55/2.